

Notice of Allowability

Application No.

10/759,211

Examiner

J. Allen Shriver

Applicant(s)

QUELLAIS ET AL.

Art Unit

3618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 4/18/2005.
2. ☒ The allowed claim(s) is/are 1-44.
3. ☒ The drawings filed on 05 May 2004 are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☒ All b) ☐ Some* c) ☐ None of the:
 1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|---|---|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input checked="" type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date <u>6/15/2005</u> . |
| 3. <input checked="" type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date <u>4/18/2005</u> | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____. |

DETAILED ACTION

Response to Amendment

1. Applicant's submittal of an amendment was received on April 18, 2005, wherein claims 1-2 were amended and new claims 23-44 were added.

Election/Restrictions

2. Claim 1 is generic and allowable. Accordingly, the restriction requirement as to the encompassed species is hereby withdrawn and claims 4, 5, 7-10, 12-15 and 17 are no longer withdrawn from consideration since all of the claims to this species depend from or otherwise include each of the limitations of an allowed generic claim.

In view of the above noted withdrawal of the restriction requirement as to the linked species, applicant(s) are advised that if any claim(s) depending from or including all the limitations of the allowable generic linking claim(s) be presented in a continuation or divisional application, such claims may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Once a restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 44 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

EXAMINER'S AMENDMENT

3. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR

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1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Mr. Jim Rowland on June 20, 2005.

The application has been amended as follows:

IN THE CLAIMS:

In claim 1, line 10, the phrase "directly or indirectly" has been deleted.

In claim 1, line 11, the phrase --sole of the-- has been added before the word "boot" and the phrase --or to a connecting member on which the sole is connected-- has been added after the word "boot".

Claim 7 has been replaced in its entirety by:

Claim 7. A binding device according to claim 1, wherein the binding device further comprises said connecting member on which the boot is adapted to be connected; and the flexible linkage is connected to the connecting member.

Claim 12 has been replaced in its entirety by:

Claim 12. A binding device according to claim 1, wherein the binding device further comprises said connecting member on which the boot is adapted to be connected; the flexible linkage is adapted to be connected to the connecting member; the connecting member is part of the retaining system and is capable of moving in relation to the sports article between a low position and a high position;

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the flexible linkage of the elastic return system connects the elastic member to the connecting member, in order to return the connecting member and the boot to the low position.

In claim 13, line 3, the phrase --for transverse guiding of the boot-- has been added after the word "mechanism".

In claim 15, line 3, the phrase --rotatable about an axis-- has been added before the word "coaxial".

In claim 23, line 2, the word "being" has been deleted and the word --is-- has been added after the word "linkage".

In claim 28, line 9, the phrase "directly or indirectly" has been deleted.

In claim 28, line 9, the phrase --sole of the-- has been added before the word "boot" and the phrase --or to a connecting member on which the sole is connected-- has been added after the word "boot".

Allowable Subject Matter

4. Claims 1-44 are allowed over the prior art.

5. The following is an examiner's statement of reasons for allowance: In the Examiner's opinion, a binding device for binding a boot to a sports article having a retaining system to connect the front of the boot to the sports article and a separate, independent elastic return system for elastic return of the boot from the high position to a low position, the elastic return system having a flexible linkage connecting the elastic member to the boot, was not anticipated by the prior art, nor would it have been obvious to a person of ordinary skill in this art.

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Examiner agrees with Applicant that the retaining system of the present invention is independent of the elastic return system, so that even if the linkage element 30 were to fail or break, the retaining system continues to prevent the release of the boot from the sports apparatus. The prior art, specifically Veux discloses the retaining system including the elastic return as parts of the retaining system. Additionally, Examiner agrees that Veux fails to disclose a return member, which deflects or guides the flexible member so that it extends upwardly to the attachment to the boot. Additionally, the amendments to claims 1 and 28, requiring the flexible linkage having a first end connected directly or indirectly to the elastic member and a second end adapted to be connected to the sole of the boot or to a connecting member on which the sole is connected, defines the present invention over Weber. Weber discloses the flexible linkage wrapping around the front of the boot of the user, as opposed to being connected to the sole of the boot or to a connecting member on which the sole is connected.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Allen Shriver whose telephone number is (571) 272-6698. The examiner can normally be reached on Monday, Wednesday and Thursday 5:30 am-5:00 pm and Tuesday 5:30 am-11:00 am.

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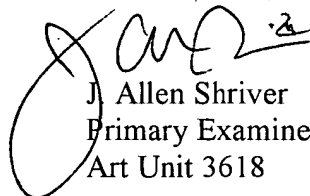
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris P. Ellis can be reached on (571) 272-6914. Any inquiry of a general nature or relating to the status of this application should be directed to the group receptionist whose telephone number is (703) 308-1113.

As of May 1, 2003, any response to this action should be mailed to:

Mail Stop _____
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Or faxed to: (703) 872-9306 (for formal communications intended for entry). (571) 273-6698 (for informal communications directly to the Examiner).

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

 6/20/05
J. Allen Shriver
Primary Examiner
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JAS